

**Letter of Findings: 01-20190959**  
**Individual Income Tax**  
**For the Year 2012, 2013, and 2014**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Restaurant Shareholder failed to establish that the Department erred in assessing additional individual income tax based on income which "flowed through" from his Indiana restaurant business.

**ISSUE**

**I. Individual Indiana Income Tax - Audit Assessment.**

**Authority:** IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-4-6; IC § 6-8.1-5-1(c); IC § 6-8.1-5-2(a); IC § 6-8.1-5-2(b); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, (Ind. Tax Ct. 2007); [45 IAC 3.1-1-66](#).

Taxpayer argues that the Department erred in assessing additional amounts of Indiana income tax.

**STATEMENT OF FACTS**

Taxpayer is an Indiana resident and a 100 percent shareholder of an S corporation, which operates restaurants inside and outside Indiana. The restaurants' income "pass[es] through" to Taxpayer - the sole shareholder - who is required to report the income in his Indiana individual income tax return and remit his Indiana income tax.

The S corporation was audited by the Internal Revenue Service. The federal audit found that Taxpayer had underreported his income by more than 25 percent. The Indiana Department of Revenue ("Department") thereafter conducted an audit of Taxpayer's 2012 through 2014 Indiana income tax returns. The Department's audit resulted in an assessment of additional Indiana income tax for those years.

Taxpayer disagreed with the Indiana assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer explained the basis for his protest. This Letter of Findings results.

**I. Individual Indiana Income Tax - Audit Assessment.**

**DISCUSSION**

Taxpayer claimed that the Department erroneously assessed additional Indiana individual income tax for 2012, 2013, and 2014. The issue is whether Taxpayer has met his burden of establishing that the Department erred when it assessed Taxpayer additional Indiana income tax.

Because the audit resulted in an assessment of additional tax, it becomes the Taxpayers' responsibility to establish that the assessment including interest, penalty, and tax is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

When a taxpayer challenges taxability in a specific instance, that taxpayer is required to provide documentation

explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). To efficiently and effectively compute what is considered the resident/taxpayer's Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be his or her Indiana income tax after applying certain additions and subtractions to that starting point thereafter.

IC § 6-3-4-6 further mandates the taxpayer to notify the Department of any modification thereafter, especially when the taxpayer has a federal modification which results in a change in the taxpayer's federal or Indiana adjusted gross income.

In addition, Indiana law requires that corporate shareholders report and pay Indiana income tax on income which "flows through" from the S corporation to the shareholders. [45 IAC 3.1-1-66](#) provides in part:

Subchapter S corporation shareholders are taxed on their distributive shares of income at the individual income tax rate. The character of the income (as capital gains or ordinary income) also passes through to the shareholders.

Nonetheless, Taxpayer argues that the proposed 2012 through 2014 assessments - dated January 2019 - are barred by the three-year statute of limitations. The statute on which Taxpayer relies, IC § 6-8.1-5-2(a), provides:

Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed, or either of the following:

- (1) The due date of the return.
- (2) In the case of a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax, the end of the calendar year which contains the taxable period for which the return is filed.

Upon review, Taxpayer's reliance on the above provision is misplaced. The Department here notes an exception to the general three-year statute of limitations. If a taxpayer files a return which understates that taxpayer's income by 25 percent, the Indiana statute of limitations is extended to six years. IC § 6-8.1-5-2(b) provides:

If a person files a return for the utility receipts tax ([IC 6-2.3](#)), adjusted gross income tax ([IC 6-3](#)), supplemental net income tax ([IC 6-3-8](#)) (repealed), county adjusted gross income tax ([IC 6-3.5-1.1](#)) (repealed), county option income tax ([IC 6-3.5-6](#)) (repealed), local income tax ([IC 6-3.6](#)), or financial institutions tax ([IC 6-5.5](#)) that understates the person's income, as that term is defined in the particular income tax law, by at least twenty-five percent (25[percent]), the proposed assessment limitation is six (6) years instead of the three (3) years provided in subsection (a).

In this instance, Taxpayer underreported his 2013 and 2014 income by more than 25 percent bringing Taxpayer within the six year statute of limitations. Therefore, the 2013 and 2014 January 2019 assessments are not barred the statute of limitations because the 2013 return was due April 15, 2014, and the 2014 return was due April 15, 2015.

The audit report indicates that "a representative of the [T]axpayer around August 2015 advised of [the] federal adjusted gross income increase to the shareholder's individual income tax for calendar year 2012. As such, year 2012 is included in the investigation." Moreover, the Department's records indicate that Taxpayer submitted his original 2012 Indiana return April 2015. On that return, Taxpayer underreported his adjusted gross income in excess of 25 percent again bringing him within the six year statute of limitations. The January 2019 assessment was issued within six years of the date the return was filed.

The 2012, 2013, and 2014 assessments were not barred by the statute of limitations. For 2012, the assessment was issued well within the extended six-year statute of limitations. For 2013 and 2014, Taxpayer failed to amend

his Indiana income tax returns reporting the federal modifications. As such, the statute of limitations does not toll.

### **FINDING**

Taxpayer's protest is respectfully denied.

August 12, 2019

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